AZJ
08/18/2016
Item No. 13

AN ORDINANCE 2016-08-18-0611

AUTHORIZING THE CLOSURE, VACATION, AND ABANDONMENT OF A 0.110-ACRE IMPROVED SEGMENT OF ARDEN GROVE IN COUNCIL DISTRICT 1.

* * * * *

WHEREAS, City of San Antonio's Information Technology Services Department is requesting the closure, vacation and abandonment of an unimproved portion of Arden Grove; and

WHEREAS, this portion of street is surplus to City of San Antonio needs and such closure will alleviate the City of San Antonio from maintenance and other costs; **NOW THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Subject to the reservation below, as an exercise of its discretion, the City Council authorizes the closure, vacation, and abandonment of the right of way segment ("Right of Way Segment") identified in Section 2 of this Ordinance.

SECTION 2. The detailed description of the Right of Way Segment is set forth on **Attachment I**. Maps and pictures of the Right of Way Segment are set forth on **Attachment II**. Both Attachments I and II are incorporated into this ordinance for all purposes as if they were fully set forth. Attachment I controls over any discrepancy between it and Attachment II.

SECTION 3. The properties abutting the Right-of-Way Segment are:

Address:	*Description:*	*Owner Listed by Bexar Appraisal District:*
317 Arden Grove	NCB 783 BLK 26 LOT NWTRI 26. 62'X25.16'-ARBB,PT OF A-ARB A3,PT OFTRA ARB A2&A2-1, 23	San Antonio Museum of Art
220 Arden Grove	NCB 783 BLK 34 LOT A-9 & A-10, N 55.5' OF S 91' OF 14 OR A11	San Antonio Museum of Art

The listing above is made solely to facilitate indexing this Ordinance in the real property records. If the listing is inaccurate or not comprehensive, it does not affect the validity of the closure.

SECTION 4. Reservation of Utility Rights. All presently existing water, recycled water and wastewater lines and facilities, electric transmission and distribution poles, lines and facilities, gas lines and facilities, communication lines and facilities, or any other public utility lines and facilities, if any, may remain in place despite this Ordinance and may continue to be accessed, used, repaired, enlarged, upgraded, replaced and maintained in the ordinary course of business. Any person wanting removal or relocation of an existing utility pole, line or facility must negotiate separately with the pertinent utility. Any person building on the Right-of-Way Segment without first reaching an agreement with a utility having poles, lines or facilities in the segment does so at his own risk. After the date of this Ordinance, other than replacement of an existing pole, line or facility, no utility may add additional utility poles, lines or facilities in the Right-of-Way Segment based on a claim that the Right-of-Way Segment is public right of way. All existing drainage rights in the Right-of-Way Segment are retained by the City. This closure does not give up any right arising other than from the plat or other instrument creating the public street or alley right of way. Neither does this Ordinance create new easement rights.

SECTION 5. The closure shall not be authorized until the following conditions have been met:

1. Owners of abutting property to the Right of Way Segment must provide an ingress and egress access easement to maintain compliance with Chapter 35 of the City Code, the Unified Development Code, in substantially the same form as shown in **Attachment III**.

If the City Manager finds that each of the conditions listed in this Ordinance have been satisfied, the City Manager or her designee is authorized and directed to execute and deliver a recordable certificate of closure reflecting this ordinance and closing, vacating and abandoning the Right of Way Segment. The City Manager or her designee, severally, are further authorized and directed to execute and deliver all necessary documents, including quit claim deeds approved by the City Attorney's Office, and to do all other things conducive to effect this closure, abandonment, and vacation

SECTION 6. The Right-of-Way Segment exists by easement. The underlying fee ownership of the Right-of-Way Segment by the adjacent lot owners is now unburdened by the rights closed, vacated, and abandoned. For purposes of future conveyance and to better reflect their ownership generally, owners of the adjacent property should replat. No such replat impairs the rights retained by City above, unless in the course of replatting, the owner, at its own expense, otherwise provides for those rights according to platting rules of general applicability.

SECTION 7. Per originating department's Legistar details there is no fiscal impact associated with this item; therefore, no fiscal ordinance language is required.

SECTION 8. This Ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under San Antonio Municipal Code § 1-15, in which case it becomes effective immediately.

PASSED AND APPROVED this **18th** day of **August**, **2016**.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for **Martha G. Sepeda, Acting City Attorney**

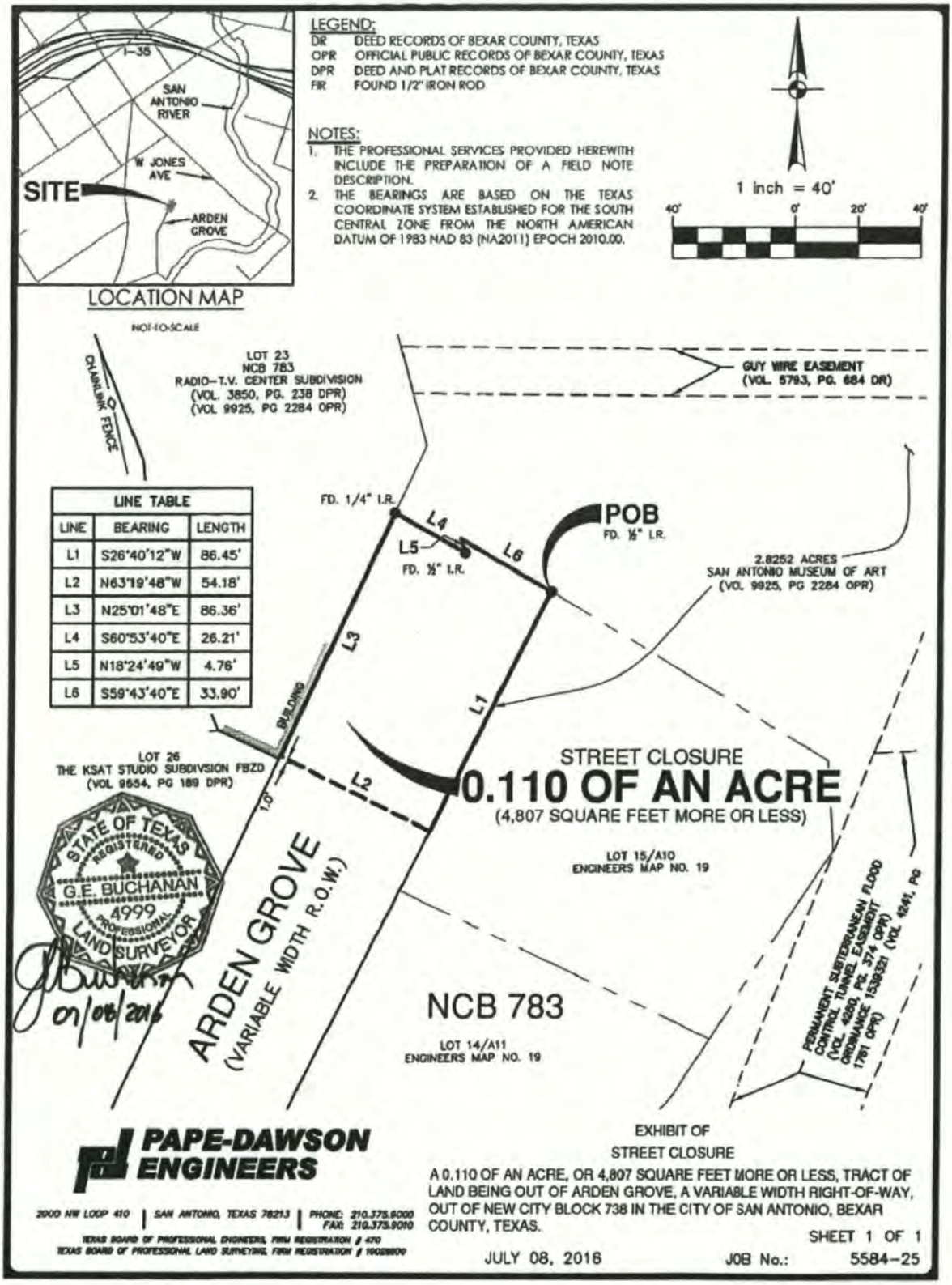
Agenda Item:	**13 (in consent vote: 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22)**
Date:	08/18/2016
Time:	09:17:28 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the closure, vacation and abandonment of a 0.110 acre improved portion of Arden Grove to improve security for the City's public safety radio communication shelter and related equipment in City Council District 1. [Peter Zanoni, Deputy City Manager; Mike Frisbie, Director, Transportation & Capital Improvements]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				x
Alan Warrick	District 2		x			x	
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

Attachment I

S.P. 1961 City of San Antonio request to close, vacate and abandon an unimproved portion of Arden Grove

Attachment II



LINE TABLE		
LINE	BEARING	LENGTH
L1	S26°40'12"W	86.45'
L2	N63°19'48"W	54.18'
L3	N25°01'48"E	86.36'
L4	S60°53'40"E	26.21'
L5	N18°24'49"W	4.76'
L6	S59°43'40"E	33.90'

PAPE-DAWSON ENGINEERS

METES & BOUNDS
FOR
STREET CLOSURE

A 0.110 of an acre, or 4,807 square feet more or less, tract of land being out of Arden Grove, a variable width right-of-way, out of New City Block 738 in the City of San Antonio, Bexar County, Texas. Said 0.110 of an acre tract being more fully described as follows, with bearings based on the Texas Coordinate System established for the South Central Zone from the North American Datum of 1983 NAD 83 (NA2011) epoch 2010.00;

BEGINNING: At a found ½" iron rod for the northeast corner of said Arden Grove and a re-entrant corner of a 2.8252 acre tract conveyed to the San Antonio Museum of Art recorded in Volume 9925, Page 2284 of the Official Records of Bexar County, Texas;

THENCE: S 26°40'12" W, along and with the northeast right-of-way line of said Arden Grove and a southwest line of said 2.8252 acre tract, a distance of 86.45 feet to a point;

THENCE: N 63°19'48" W, departing a southwest line of said 2.8252 acre tract, over and across said Arden Grove, a distance of 54.18 feet to a point in the west right-of-way line of said Arden Grove and a southeast line of said 2.8252 acre tract;

THENCE N 25°01'48" E, along the west right-of-way line of said Arden Grove, a southeast line of said 2.8252 acre tract, a distance of 86.36 feet to a found ¼" iron rod being on a southeast line of said 2.8252 acre tract and the northwest corner of said Arden Grove;

THENCE: Departing a southeast line of said 2.8252 acre tract and the northwest corner of said Arden Grove, along and with the north right-of-way lines of said Arden Grove the following bearings and distances:

S 60°53'40" E a distance of 26.21 feet to a found ½" iron rod;

N 18°24'49" W, a distance of 4.76 feet to a point;

S 59°43'40" E, a distance of 33.90 feet to the POINT OF BEGINNING and containing 0.110 of an acre in Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey description and map prepared under job number 5584-25 by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.
DATE: July 08, 2016
JOB NO. 5584-25
DOC. ID. N:\CIVIL\5584-25\EX_5584-25 FN-0.110 AC.docx

STATE OF TEXAS REGISTERED G.E. BUCHANAN 4999 PROFESSIONAL LAND SURVEYOR

07/08/2016

TBPE Firm Registration #470 | TBPLS Firm Registration #10028800
San Antonio | Austin | Houston | Fort Worth | Dallas
Transportation | Water Resources | Land Development | Surveying | Environmental
2000 NW Loop 410, San Antonio, TX 78213 T: 210.375.9000 www.Pape-Dawson.com

Attachment III

Notice of Confidentiality Rights: If You Are a Natural Person, You May Remove or Strike Any or All the Following Information from Any Instrument That Transfers an Interest in Real Property Before it Is Filed for Record in the Public Records: Your Social Security Number or Your Driver's License Number.

PUBLIC ACCESS EASEMENT

Effective Date: Effective date of the Ordinance

Grantor:
Grantor's Mailing Address:

Grantee: CITY OF SAN ANTONIO
Grantee's Mailing Address: CITY OF SAN ANTONIO,
Attn: TCI Real Estate Division
PO Box 839966,
San Antonio, Texas 78283

Easement Property: See Attached **Exhibit "A"**.

Easement Purpose: For providing free and uninterrupted pedestrian and vehicular ingress and egress along that portion of the Easement Property and all other associated rights as if such portion were a platted public alley in conformance with Chapter 35 of the City Code, San Antonio (Unified Development Code).

Consideration: The sum of Ten and No/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor.

Ordinance:

Reservations from Conveyance: None.

Exceptions to Warranty: None.

Grant of Easement: Grantor, for the Consideration and subject to the Reservations from Conveyance and Exceptions to Warranty, grants, sells, and conveys to Grantee and Grantee's heirs, successors and assigns an easement over, on, and across the Easement Property for the Easement Purpose and for the benefit of the general public, together with all and singular the rights and appurtenances thereto in any way belonging (collectively, the "Easement"), to have and to hold the Easement to Grantee and Grantee's heirs, successors and assigns. Grantor binds Grantor and Grantor's heirs, successors and assigns to warrant and forever defend the title to the Easement in Grantee and Grantee's heirs, successors and assigns against every person whomsoever lawfully claiming or to claim the Easement or any part thereof, except as to the

Reservations from Conveyance and Exceptions to Warranty, to the extent such claim arises by, through, or under Grantor but not otherwise.

Terms and Conditions: The following terms and conditions shall apply to the Easement granted by this agreement:

1. *Character of Easements.* The Easement is exclusive, irrevocable subject to the duration in subsection 2, and for the benefit and use of the general public for ingress and egress along the Easement Property.

2. *Duration of Easement.* The duration of the Easement shall be the period commencing on the effective date and automatically expiring upon the first of either (i) recordation of an approved subdivision plat (or replat) covering the easement area and providing access in compliance with Chapter 35 of the City Code (Unified Development Code) or (ii) if the Easement Property once again becomes public right-of-way pursuant to the terms of the Ordinance.

3. *Reservation of Rights.* Grantor reserves for Grantor and Grantor's heirs successors and assigns the right to continue to use and enjoy the surface of the Easement Property for all purposes that do not interfere with or interrupt the use or enjoyment of the Easement by Grantee for the Easement Purposes. Grantor shall not grant any additional easements, licenses, permits, or other interest that may affect the rights of Grantee unless agreed to in writing by Grantee.

4. *Improvement and Maintenance of Easement Property.* Maintenance of the Easement Property shall be the sole expense of Grantor. Grantee has the right to eliminate any encroachments into the Easement Property. Grantor must maintain the Easement Property in a neat and clean condition. During the term of this Easement, Grantor has the right to develop the easement Property in accordance with a City of San Antonio approved replat of said property. Grantee has the right to remove or relocate any fences within the easement property or along or near its boundary lines if reasonably necessary to continue the purposes of this easement. On written request by Grantee, the owners of the Easement Property will execute or join in the execution of easements for sewer, drainage, or utility facilities under or across the easement Property.

5. *Equitable Rights of Enforcement.* This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Retraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

6. *Binding Effect.* This Agreement binds and inures to the benefit of the parties and their respective heirs, successors and permitted assigns.

7. *Choice of Law.* This Agreement will be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the County or Counties in which the easement property is located.

8. *Counterparts.* This Agreement may be executed in any number of counterparts with the same effect as if signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

9. *Waiver of Default.* It is not a waiver or consent to default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

10. *Further Assurances.* Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions and conditions of this agreement and all transactions contemplated by this agreement.

11. *Entire Agreement.* This agreement and any exhibits are the entire agreement of the parties concerning the Easement Property and the grant of the Easement by Grantor to Grantee. Grantor represents that (i) it owns the property over which this easement is granted and (ii) it is a Texas corporation, duly organized, validly existing, and in good standing under the laws of the State of Texas with authority to grant this easement to Grantee. There are no representations, agreements, warranties, or promises other than those in this agreement and neither party is relying on any statements or representations of any agent of the other party, that are not in this agreement and any exhibits.

12. *Legal Construction.* If any provision in this agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of this agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this agreement are for reference only and are not intended to restrict or define the text of any section. This agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

13. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

14. *Time.* Time is of the essence. Unless otherwise specified, all references to "days" mean calendar days. Business days exclude Saturdays, Sundays, and legal public

holidays. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holidays, the date for performance will be the next following regular business day.

GRANTOR:

By: _____

THE STATE OF TEXAS §
§
COUNTY OF BEXAR §

The foregoing instrument was acknowledged before me this the ____ day of _____, 2016, by _____, as the _____, a _____, on behalf of said _____.

Witness my hand and official seal.

_____
Notary Public

My commission expires: _____